

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		WESTERN	District OF NORTH CAROLINA
Name (under which you were convicted): RINGLING DAN COHN			Docket or Case No.:
Place of Confinement: FEDERAL MEDICAL CENTER P. O. BOX 1600, BUTNER, N.C. 27509			Prisoner No.: 19799-045
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) v. RINGLING DAN COHN	

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: _____
United States District Court for the Western District of Missouri,
Western Division
- (b) Criminal docket or case number (if you know): 4:07-CR-00093-ODS-1
- (a) Date of the judgment of conviction (if you know): March 13, 2008
[Guilty Plea Entered]
- (b) Date of sentencing: October 6, 2008
- Length of sentence: 96 Months
- Nature of crime (all counts): Bank Fraud [4 Counts] in violation of 18
U.S.C. § 1344
- (a) What was your plea? (Check one)
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____
N/A
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐ N/A
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: EIGHTH CIRCUIT COURT OF APPEALS
- (b) Docket or case number (if you know): 08--3424
- (c) Result: Affirmed in Part/Dismissed in Part
- (d) Date of result (if you know): December 9, 2009
- (e) Citation to the case (if you know): N/A
- (f) Grounds raised: Counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) asserting that the district court erred in finding Cohn had violated his plea agreement, and therefore his sentence of 96 months was unreasonable. A pro se supplemental pleading was filed asserting numerous PSR inaccuracies and ineffective assistance of counsel.
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒
- If "Yes," answer the following:
- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): N/A
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised: _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: MOVANT'S GUILTY PLEA WAS ENTERED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Movant asserts that his guilty plea is invalid, and must be vacated or set aside. Specifically, Movant asserts that (i) same was not entered knowingly and voluntary; (ii) same was coerced; (iii) the court did not strictly comply with the terms of plea agreement, (iv) the invalidation of the plea agreement resulted in a unconstitutional sentence, and (v) the guilty plea was not entered with the advice of competent counsel. The facts and law supporting the foregoing in the attached MEMORANDUM at GROUND ONE are incorporated herein by reference as though set forth in full herein and made a part hereof.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of counsel

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Movant asserts that he was denied his Sixth Amendment right to the effective assistance of counsel as identified by the acts or omissions in the attached MEMORANDUM. The facts and law supporting the foregoing in the attached MEMORANDUM at GROUND TWO are incorporated herein by reference as though set forth in full herein and made a part hereof.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐ [Claim dismissed by Court of Appeals to be asserted
in a 28 U.S.C. § 2255 proceeding]

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: PROSECUTORIAL/GOVERNMENT MISCONDUCT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Movant asserts that the prosecutor and/or governmental officials committed misconduct during the plea proceedings and between the entering of the plea and sentencing. The facts and law supporting the foregoing in the attached MEMORANDUM at GROUND THREE are incorporated herein by reference as though set forth in full herein and made a part hereof.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: factual or legal basis for claim not reasonable available

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR: A EVIDENTIARY HEARING IS REQUIRED

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant asserts that a evidentiary hearing is required hereon whereas he
may fully develop the record regarding the merit of claims raised by him
and his entitlement to relief. The facts and law supporting the foregoing
in the attached MEMORANDUM at GROUND FOUR are incorporated herein by reference
as though set forth in full herein and making same a part hereof.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Procedural request
for this motion.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: The claims asserted in Grounds One, Three, and Four were not presented to any court as the factual or legal basis for the claims were not available due to ineffective assistance of counsel. The claim asserted in Ground Two was presented to the Court of Appeals but was dismissed to be asserted in a 28 U.S.C. § 2255 proceeding.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: John P. O'Connor, 4740 Grand Avenue, Suite 300, Kansas City, Missouri 64112

(b) At arraignment and plea: Same as 15(a)

(c) At trial: N/A

(d) At sentencing: Same as 15(a)

(e) On appeal: Same as 15(a)

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* The instant motion is filed pursuant to 28 U.S.C. § 2255

¶6(1) "the date on which the judgement of conviction became final."

Movant plead guilty before the court on March 13, 2008, and was sent-

enced on October 6, 2008. A timely notice of appeal was filed and on

December 9, 2009 the Court of Appeals affirmed in part and dismissed in

part the appeal. Accordingly, the instany motion is properly before

the court in a timely manner.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: vacate, set aside the guilty plea; vacate, set aside, or correct the sentence as requested, grant a evidentiary hearing hereon.

or any other relief to which movant may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on APRIL 14, 2010 (month, date, year).

Executed (signed) on 04/14/2010 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. N/A

IN FORMA PAUPERIS DECLARATION

N/A

[Insert appropriate court]

[illegible]

FEDERAL MEDICAL CENTER
P.O. BOX 1500
BUTNER, NORTH CAROLINA 27509
4/27/79

SPECIAL AGENT MAIL

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The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been reviewed for its content. If the writer assess a risk to the operation of the theater, the writer assess a risk of potential harm which the facility has insufficient resources to handle, or if the writer desires information which is not available to the public, the writer wishes to refer the matter to a higher authority, the writer requests that you be notified. If the writer assesses a risk to the operation of the theater, please return the letter to the address above.

RINGLING DAN COHN - 19799-045

Name: _____
Number: _____

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